

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

JOSHUA BRADLEY YOUNG	§	
VS.	§	CIVIL ACTION NO. 9:16cv3
DIRECTOR, TDCJ-CID	§	

ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Petitioner Joshua Bradley Young, an inmate confined within the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed the above-styled petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court previously referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to 28 U.S.C. § 636 and applicable orders of this Court. The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the petition be dismissed without prejudice.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. Petitioner filed objections to the Report and Recommendation. The court must therefore conduct a *de novo* review of the objections in relation to the pleadings and the applicable law.

Petitioner alleges he is being improperly confined in the administrative segregation section of his prison unit. The Magistrate Judge concluded that as petitioner was challenging the conditions of his confinement, rather than the fact or duration of his confinement, his claim could not be asserted in a habeas petition.

In his objections, petitioner contends he should be able to raise his claim in a habeas petition because he is challenging the fact or duration of his confinement within the administrative segregation section of his prison unit. However, the purpose of a petition for writ of habeas corpus is to challenge the fact or duration of an inmate’s confinement within prison itself, not the fact or duration of his confinement within a particular section of a prison unit. As a result, the Magistrate


Judge correctly concluded petitioner's claim was not cognizable in a petition for writ of habeas corpus.

For the reasons set forth above, petitioner's objections are without merit and are therefore **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED** as the opinion of the court. A final judgment shall be entered dismissing the petition in accordance with the recommendation of the Magistrate Judge.

In addition, the court is of the opinion petitioner is not entitled to a certificate of appealability in this matter. An appeal from a judgment denying federal habeas relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253. The standard for a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84; *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the petitioner need not demonstrate that he would prevail on the merits. Rather, he must demonstrate that the issues he raised are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir. 2000).

In this case, the petitioner has not shown that the issue of whether his claim may be asserted in a petition for writ of habeas corpus is subject to debate among jurists of reason. The factual and legal issues raised by petitioner have been consistently resolved adversely to his position and the questions presented are not worth of encouragement to proceed further. As a result, a certificate of appealability shall not issue in this matter.

SIGNED this 24th day of March, 2016.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE